Public Prosecutor v Peter Kong

HIGH COURT (KUCHING) — CRIMINAL APPEAL NO 41–17 OF 2003 (II)
LAU BEE LAN JC
22 NOVEMBER 2004

Criminal Procedure — Appeal — Petition of appeal — Whether filing of petition out of time — Criminal Procedure Code s 307(4) & (5)

Criminal Procedure — Appeal — Petition of appeal — Discrepancy of word 'order' and 'sentence' in notice and petition of appeal — Whether miscarriage of justice — Criminal Procedure Code s 310

Criminal Procedure — Revision — Powers of High Court — Rectification of detention order upon which accused was detained in rehabilitation centre — Whether court had power to exercise powers beyond provided in ss 311, 315, 316 & 317 — Criminal Procedure Code ss 323 & 325

Criminal Procedure — Sentence — Detention of drug dependant — Intentionally escaping from lawful custody at drug rehabilitation center — Released on bond of good behaviour with two local sureties — Whether imprisonment mandatory — Whether sentence adequate — Drugs Dependants (Treatment and Rehabilitation) Act 1983 s 19(3)

The accused ('the respondent') had pleaded guilty to a charge of intentionally escaping from lawful custody at a drug rehabilitation centre pursuant to an order to undergo treatment and rehabilitation, being an offence punishable under s 19(3) of the Drug Dependants (Treatment And Rehabilitation) Act 1983 ('the Act'). The magistrate had ordered the respondent to be released on a bond of good behaviour in the sum of RM5,000 with two local sureties for a period of two years beginning 22 September 2003 ('the order'). The prosecution appealed on the grounds that the order was inadequate.

The respondent raised three preliminary objections: (1) the petition of appeal had not been filed in time and therefore the appeal should be struck off; (2) there was no intitulment stated in the notice of appeal and the notice of appeal should be struck off; (3) the notice of appeal states that 'the appeal is against the inadequacy of order' while the petition of appeal makes several references to the 'sentence' and therefore it was submitted by the respondent that nothing pertaining to the 'sentence' should be entertained by the court. The respondent also submitted that Form 3 ('the detention order') upon which the respondent was detained in the rehabilitation centre was defective for failure to specify the relevant party that was supposed to supervise the respondent after his release from detention. The issue then arose whether the court could under s 323 of the Criminal Procedure Code ('the CPC') and/or its inherent powers, rectify the detention order.

Held, altering the order and sentencing the respondent to 12 months' imprisonment:

(1) From the reading of sub-s (5) read with sub-s (4) of s 307 of the CPC, the 10 days' limit to lodge a petition of appeal apply in both instances, ie whether he has been served with the grounds of decision or when served with a notice that a copy of the notes of evidence can be obtained if an application has been made for the same. In this case, the grounds of judgment was received on 20 October 2003 and the petition of appeal was filed on 25 October 2003 and thus was within the 10 days' limit (see para 7).

(2) With regard to the intitulment, nowhere Chapter XXX of the CPC on appeals to High Court was there any requirement for any intitulment to be cited in a notice of appeal to be lodged (see para 8); *Chong Siew Choong v Public Prosecutor* [1996] 5 MLJ 65 distinguished.

(3) The use of the word 'order' in the petition of appeal had not caused any miscarriage of justice to the respondent. Oral application by the prosecution to substitute the word 'sentence' with 'order' was allowed (see paras 10-13); *Veerasingam v Public Prosecutor* [1958] MLJ 76 followed.

(4) It was inappropriate for the court to exercise revisionary powers under s 323 of the CPC to rectify the detention order. Pursuant to s 325 of the CPC, the court in the exercise of its discretionary revisionary powers could only exercise those powers conferred by ss 311, 315, 316 and 317 of the CPC, which were not applicable in addressing the respondent's request to rectify the detention order. Therefore, the detention order could not be quashed save that another application be made accordingly for a *habeas corpus* order (see paras 15 and 16).

(5) The offence under s 19(3) of the Act states that on conviction the respondent shall be liable to imprisonment not exceeding five years or to whipping not exceeding three strokes or to both. Notwithstanding imprisonment was not mandatory, from the punishment provided by law it could be seen that the offence was a serious offence, being of a custodial nature rather than imposition of a fine. The period of detention and the supervision and the other rehabilitative methods were aimed at securing the well-being of drug dependants including the respondent. There were also no extenuating circumstances or proof of abuse caused by the officer in charge as alleged. The court was therefore compelled to interfere with the order of the magistrate which was undoubtedly inappropriate in the circumstances. Therefore, pursuant to s 316(c) of the CPC the court altered the order and sentence the respondent to 12months' imprisonment (see paras 22, 26-28)

Per curiam

Since there was a record of conviction, the order of the magistrate was actually made pursuant to s 173A of the CPC and not s 294. This was confirmed by the learned counsel and prosecution who accordingly applied for the words

'Section 173A' in the notice of appeal to be substituted with the words 'Section 294'. The court granted the amendment (see para 2).

[**Bahasa Malaysia summary**

Tertuduh ('responden') telah mengaku bersalah terhadap tuduhan dengan niat melarikan diri dari jagaan sah pusat pemulihan dadah menurut satu perintah untuk menjalani rawatan dan pemulihan, merupakan satu kesalahan yang boleh dihukum di bawah s 19(3) Akta Penagih Dadah (Rawatan dan Pemulihan) 1983 ('Akta tersebut'). Majistret telah mengarahkan responden dilepaskan atas satu jaminan untuk berkelakuan baik berjumlah RM5,000 dengan dua penjamin tempatan untuk tempoh dua tahun bermula dari 22 September 2003 ('arahan tersebut'). Pendakwa telah merayu bahawa perintah tersebut telah tidak mencukupi.

Responden membangkitkan tiga bantahan awal: (1) Petisyen rayuan telah difailkan di dalam tempoh masa dan oleh itu rayuan sepatutnya dibatalkan; (2) tiada tajuk yang dinyatakan di dalam notis rayuan dan notis rayuan sepatutnya dibatalkan; (3) notis rayuan menyatakan 'The appeal is against the inadequacy of order' manakala petisyen rayuan beberapa kali merujuk kepada 'sentence' oleh itu defendan telah berhujah bahawa tiada apa-apa berkaitan dengan 'sentence' sepatutnya dilayan oleh mahkamah. Responden juga berhujah bahawa borang 3 ('perintah penahanan') yang mana defendan telah ditahan di pusat pemulihan adalah cacat kerana gagal untuk menetapkan parti yang berkenaan yang sepatutnya mengawasi responden selepas pembebasan beliau daripada tahanan. Isu yang berbangkit adalah sama ada mahkamah boleh di bawah s323 Kanun Acara Jenayah ('KAJ') dan/atau dengan kuasa yang sedia ada, membetulkan arahan penahanan.

Diputuskan, mengubah arahan dan menjatuhkan hukuman 12 bulan penjara ke atas responden:

(1) Daripada bacaan subseksyen (5) dibaca bersama subseksyen (4) dari s307 KAJ, tempoh 10 hari untuk membuat petisyen rayuan terpakai di dalam kedua-dua keadaan, ie sama ada dia telah diserahkan dengan alasan-alasan keputusan atau bila diserahkan dengan notis bahawa satu salinan nota-nota keterangan boleh didapatkan sekiranya permohonan telah dibuat untuk perkara yang sama. Di dalam kes ini, alasan-alasan keputusan telah diterima pada 20 Oktober 20003 dan petisyen rayuan telah difailkan pada 25 Oktober 2003 dan oleh itu adalah di dalam tempoh 10 hari (lihat perenggan 7).

(2) Berkenaan dengan tajuk, tidak terdapat di mana-mana di dalam Bab XXX KAJ berkenaan rayuan ke Mahkamah Tinggi sebarang keperluan untuk menyebut tajuk di dalam notis rayuan yang dibuat (lihat perenggan 8); *Chong Siew Choong v Public Prosecutor* [1996] 5 MLJ 65 dibezakan.

(3) Penggunaan perkataan 'order' di dalam petisyen rayuan tidak menyebabkan sebarang satu pelaksanaan keadilan yang salah kepada responden. Permohonan lisan oleh pendakwaan untuk menggantikan perkataan 'sentence' dengan 'order' dibenarkan (lihat perenggan 10–13); *Veerasingam v Public Prosecutor* [1958] MLJ 76 diikut.

(4) Adalah tidak sesuai untuk mahkamah melaksanakan kuasa semakannya di bawah s 323 KAJ untuk membetulkan arahan penahanan. Menurut s325 KAJ, mahkamah di dalam melaksanakan kuasa budi bicara dan semakan hanya boleh melaksanakan kuasa-kuasa yang diberikan oleh ss311, 315, 316 dan 317 KAJ, yang mana tidak terpakai di dalam mengutarakan permintaan responden untuk membetulkan arahan penahanan. Oleh itu, arahan penahanan tidak boleh ditolak melainkan permohonan lain dibuat untuk arahan *habeas corpus* (lihat perenggan 15 dan 16).

(5) Kesalahan di bawah s 19(3) Akta tersebut menyatakan bahawa sekiranya didapati bersalah responden akan dipenjarakan tidak melebihi lima tahun atau sebatan tidak melebihi tiga sebatan atau kedua-duanya sekali. Walaupun pemenjaraan bukanlah mandatori, daripada hukuman yang disediakan oleh undang-undang ia boleh dilihat bahawa kesalahan itu merupakan kesalahan serius, yang berbentuk jagaan daripada dikenakan denda. Tempoh penahanan dan pengawasan dan cara-cara lain pemulihan adalah disasarkan untuk kesejahteraan penagih-penagih dadah termasuklah responden. Tidak juga terdapat keadaan hal yang meringankan atau bukti penyalahgunaan yang disebabkan oleh pegawai yang bertugas seperti mana yang didakwa. Oleh itu, mahkamah terpaksa mencampuri arahan majistret yang jelasnya didapati tidak sesuai di dalam hal keadaan itu. Oleh itu, menurut s 316(c) KAJ mahkamah telah mengubah arahan itu dan menjatuhkan hukuman penjara 12 tahun kepada responden (lihat perenggan 22, 26-28).

Per curiam

Memandangkan tidak terdapat rekod sabitan, arahan majistret sebenarnya dibuat dimenurut s 173A KAJ dan bukan s 294. Ini telah disahkan oleh peguam yang bijaksana dan pendakwa yang telah memohon perkataan-perkataan 'Section 173A' di dalam notis rayuan untuk ditukarkan dengan perkataan-perkataan 'Section 294'. Mahkamah telah membenarkan pindaan itu (lihat perenggan 2).]

Notes

For cases on petition of appeal generally, see 5(1) *Mallal's Digest* (4th Ed, 2004 Reissue) paras 534–535

For cases on revisionary power of High Court, see 5(2) *Mallal's Digest* (4th Ed, 2004 Reissue) para 3001

For cases on detention of drug dependants, see 5(2) *Mallal's Digest* (4th Ed, 2004 Reissue) para 3367

Cases referred to

Chong Siew Choong v Public Prosecutor [1996] 5 MLJ 65 (dist)
Jayanathan v Public Prosecutor [1973] 2 MLJ 68 (refd)
Muhammad Atam Abdul Wahab v Minister of Home Affairs & Anor [2001] 1 MLJ 208 (refd)
Public Prosecutor v Lim Hong Chin [1993] 3 MLJ 736 (refd)
Public Prosecutor v Loo Choon Fatt [1976] 2 MLJ 256 (refd)
Public Prosecutor v Low Kok Wai [1988] 3 MLJ 123 (refd)
Public Prosecutor v Mohamed Nor & Ors [1985] 2 MLJ 200 (refd)
Public Prosecutor v Teh Ah Cheng [1976] 2 MLJ 186 (refd)
Public Prosecutor v Yap Chong Fatt [1963] MLJ 136 (refd)
Teo Siew Peng & Ors v Public Prosecutor [1985] 2 MLJ 125 (refd)
Tan Tek Seng @ Tan Chee Meng v Public Prosecutor [1990] 2 CLJ 103 (refd)
Veerasingam v Public Prosecutor [1958] MLJ 76 (folld)

Legislation referred to

Criminal Procedure Code ss 173A, 294, 307, 310, 311, 315-317, 323, 325
Dangerous Drugs Act 1952 s 12(2), (4), (5), (6), (7)
Drug Dependants (Treatment And Rehabilitation) Act 1983, s 19(3)
Drug Dependants (Treatment And Rehabilitation) (Forms) Rules 1983, Form 3

Appeal from: Magistrate's Court, Kuching (Criminal Case No: M–83–325–2003–E)

Mahmud bin Haji Abdullah (Yong Leou Shin with him) (Attorney General's Chambers) for the appellant.
Voon Lee Shan (Voon & Co) for the respondent.

Lau Bee Lan JC:

[1] The Public Prosecutor has appealed against the order of the learned magistrate made on 26 September 2003 in respect of the respondent (accused in the court below) who pleaded guilty to a charge of intentionally escaping from lawful custody at Pusat Serenti, KM10, Penrissen Road, Kuching pursuant to an order to undergo treatment and rehabilitation therein, being an offence punishable under s 19(3) of the Drug Dependants (Treatment and Rehabilitation) Act 1983 (Act 283) ('the Act').

[2] The learned magistrate had ordered the respondent to be released on a bond of good behaviour in the sum of RM5,000 with two local sureties for a period of two years beginning 22 September 2003 ('the order'). Although the learned magistrate did not state the order was made pursuant to which section, nevertheless, since there is a record of conviction, it would have to be made under s 294 of the Criminal Procedure Code ('the CPC'). This was confirmed by the learned counsel and learned deputy public prosecutor ('DPP') who accordingly applied for the words 'Section 173A' in the notice of appeal to be substituted with the words 'Section 294'. The court granted the amendment.

[3] The facts of the case adduced by the prosecution are that on 9 March 2000, the respondent was arrested under s 3(1) of the Act. In the meantime, there were two charges pending against the respondent in the magistrate's court. On 20 March 2000 the respondent was sentenced to four months' and three months' imprisonment which were to run concurrently for possession of drugs. On 4 May 2000 whilst serving sentence in prison, the respondent was ordered by the learned magistrate to undergo treatment under s 6(1)(a) of the Act at Pusat Serenti for two years with effect from 9 March 2000 until 8 March 2002. The term of imprisonment for the two charges, ie four months expired on 10 June 2000. After the expiry of that imprisonment term, the respondent was sent to Pusat Serenti. On 25 August 2000 the respondent escaped from Pusat Serenti with another person by the name of Chin. Chin was arrested on the 21 February 2001 and was charged on 7 March 2001 under s 19(3) of the Act and was sentenced to 12 months' imprisonment from the date of sentencing. The respondent only managed to be arrested by the police on 17 September 2003. On 22 September 2003 he was brought to court and charged under s 19(3) of the Act and was released on bond under s 294 of the CPC.

[4] I find that these facts are consistent with exh PI, the brief facts of case and exh P2, form 3 issued under the Act admitted to by the respondent and with other documents which include the warrant of commitment dated 20 March 2000 contained in the record of appeal.

[5] At the outset, I wish to state that the respondent has raised three preliminary objections. The first is whether the petition of appeal has been filed in time, otherwise the appeal should be struck off. Learned counsel for the respondent cited sub-ss (5) and (6) of s 307 of the CPC. The learned DPP responded that the grounds of judgment was received on 20 October 2003 and the petition of appeal was filed on 25 October 2003 and thus was within the 10 days' limit.

[6] Perusing the record of appeal, I am of the view that what the learned DPP actually meant is not the receipt of grounds of judgment but rather the receipt of the notes of proceeding because the learned magistrate did not write any grounds of judgment per se in respect of the appeal against inadequacy of the said order save for the statement at p 4 of the record of appeal as follows:

> In passing the sentence, the court takes into consideration the plea in mitigation by the accused and the court is of the view that a lenient approach should be taken in determining the appropriate sentence against accused in this case.

[7] Be that as it may, the 10 days limit apply in both instances, ie an appellant has to lodge the petition of appeal within the prescribed period whether he has been served with the grounds of decision or when served with a notice that a copy of the notes of evidence can be obtained if an application has been

made for the same. This is evident from sub-s (5) read with sub-s (4) of s 307 of the CPC which provides:

> (5) If the appellant within the period provided in subsection (1) for lodging his notice of appeal has applied for a copy of the notes of the evidence recorded by the Magistrate at his trial he shall lodge his petition of appeal as provided in subsection (4) [within ten days after the copy of the grounds of decision has been served]
>
> (a) within the period provided by such subsection; or
>
> (b) *within a period of ten days from the date when a notice* is left at his address for service specified in subsection (2) *that a copy of the notes of evidence can be had free of charge*. whichever period shall be the longer. (Emphasis added.)

[8] The second preliminary objection of the respondent is that there is no intitulment stated in the notice of appeal and the notice of appeal should be struck off. In this regard, I agree with the learned DPP, the case of *Chong Siew Choong v Public Prosecutor* [1996] 5 MLJ 65 is distinguishable in that it pertains to a miscellaneous criminal application with regard to an application to the High Court to hear a case registered in another High Court. In any event, not only is it irrelevant; it is also not binding on this court. Furthermore, the governing provisions in respect of appeals to the High Court is Chapter XXX of the CPC encompassing ss 303A to 322. It is to be noted that nowhere in these provisions is there any requirement for any intitulment to be cited in a notice of appeal to be lodged.

[9] The third preliminary objection relates to the point that the notice of appeal states that 'the appeal is against the inadequacy of order' and it was submitted by the respondent that nothing pertaining to the 'sentence' should be entertained by the court. The learned DPP conceded that para 2 of the petition of appeal makes several references to the word 'sentence'

[10] I agree with the learned DPP that the error in not using the word 'order' in the petition of appeal has not caused any miscarriage of justice to the respondent bearing in mind that the notice of appeal expressly states against the 'inadequacy of order' and the respondent had signed the bond of good behaviour with his two sureties when the learned magistrate imposed the order. Relying on s 310 of the CPC and the case of *Veerasingam v Public Prosecutor* [1958] MLJ 76**,** the learned DPP has orally applied to the court to substitute the word 'sentence' with 'order'.

[11] Section 310 of the CPC provides:

> A Judge may, on the application of any person desirous of appealing who may be debarred from so doing upon the ground of his not having observed some formality or some requirement of this Code, permit an appeal upon such terms and with such directions to the Magistrate and to the parties as the Judge shall consider desirable, in order that substantial justice may be done in the matter.

[12] In construing the aforesaid section, the Court of Appeal in *Veerasingam*'s case at p 79 opined:

> In the present proceedings it is not for us to lay down any rule as to how the powers of the court under s 310 are to be invoked. *The ordinary way of doing so is clearly by notice on motion though that would always be subject to such directions as the judge might give in terms of the section. Nor would we attempt any definition of what is substantial justice beyond suggesting in this connection that substantial justice is done when a rightful conviction is upheld and a wrongful one is quashed.* (Emphasis added.)

[13] Mindful of the fact that there is no express form upon which the application under s 310 of the CPC has to be made and coupled with the fact that no prejudice whatsoever has been caused to the respondent, I allow the oral application of the learned DPP in order that substantial justice may be done in this appeal.

[14] Learned counsel for the respondent also raised the point that Form 3, the order dated 4 May 2000 made pursuant to s 6 of the Act upon which the respondent was detained at Pusat Serenti for two years ('the detention order') was defective due to the failure to specify the relevant party that was supposed to supervise the respondent after his release from detention by omitting to make the appropriate deletion.

[15] The learned counsel has urged the court to exercise its revisionary powers under s 323 of the CPC and/or its inherent powers. I find that this contention is devoid of merit and inappropriate for the court to exercise revisionary powers under s 323 of the CPC. The reason being that pursuant to s 325 of the CPC, the court in the exercise of its discretionary revisionary powers can only exercise those powers conferred by ss 311, 315, 316 and 317 of the CPC. A perusal of ss 311, 315 and 317 pertaining to stay of execution pending appeal, to arrest of respondent in certain cases and order to take further evidence respectively reveal that they are not applicable in addressing the respondent's request to rectify the detention order. Even, s 316 which deals with decision on appeal in particular sub-s (c) cannot be invoked because the power of the judge at the hearing of an appeal 'from any other order' is only to 'alter or reverse such order' *but* the judge is not empowered to quash or invalidate the detention order.

[16] Therefore, I agree with the learned DPP that the detention order cannot be quashed save that another application be made accordingly for a *habeas corpus* order.

[17] This was the procedure adopted in the case of *Muhammad Atam Abdul Wahab v Minister of Home Affairs & Anor* [2001] 1 MLJ 208, wherein the applicant who had been detained under the Act pursuant to a magistrate's order claimed that the said order was flawed.

[18] I now turn to the merits of the appeal. The grounds advanced by the appellant are basically:

(1) the sentence in the circumstances is manifestly inadequate asthe learned magistrate did not consider the purpose of sentencing for cases of this nature;

(2) the order of the learned magistrate failed to reflect the gravity and seriousness of the offence;

(3) failure of the learned magistrate to strike a balance between public interest and that of the respondent's. In support, the cases of *Public Prosecutor v Teh Ah Cheng* [1976] 2 MLJ 186 and *Public Prosecutor v Loo Choon Fatt* [1976] 2 MLJ 256 were cited; and

(4) the respondent's plea of guilty should not be given undue weight since he has no defence to the charge as he had escaped from lawful custody: *Public Prosecutor v Low Kok Wai* [1988] 3 MLJ 123 was cited.

[19] On the other hand, the respondent maintained that the order of the learned magistrate should not be varied primarily because:

(1) based on the authorities cited, *Teo Siew Peng & Ors v Public Prosecutor* [1985] 2 MLJ 125; *Tan Tek Seng @ Tan Chee Meng v Public Prosecutor* [1990] 2 CLJ 103; *Public Prosecutor v Yap Chong Fatt* [1963] MLJ 136; *Public Prosecutor v Mohamed Nor & Ors* [1985] 2 MLJ 200 and *Public Prosecutor v Lim Hong Chin* [1993] 3 MLJ 736, all of which involved offences punishable with more severe punishment, yet the accused persons were bound over under s 294 of the CPC;

(2) following *Jayanathan v Public Prosecutor* [1973] 2 MLJ 68, the term 'shall be liable' does not make the term of imprisonment mandatory; hence the respondent can be bound over under s294 of the CPC;

(3) there were extenuating circumstances because the respondent was subject to abuse by the officer in charge of the Pusat Serenti; and

(4) the respondent has pleaded guilty; did not use any violence; first offender; and the usual mitigation of being married with one child with aged parents to support and was assisting his elder brother who had failing eyesight in his business.

[20] It is trite law that an appellate court is slow to interfere with any sentence or order imposed by the lower courts unless it is manifestly wrong in the sense of being illegal or being unsuitable to the proven facts or circumstances (per Abdul Hamid CJ (Malaya) (as he then was) in *Public Prosecutor v Mohamad Nor & Ors* at p 202.

[21] In imposing the order, the learned magistrate said that he had considered the respondent's plea in mitigation and had to adopt a lenient approach. The question is has the learned magistrate erred in any manner. Is the learned magistrate justified to do so?

[22] The offence for which the respondent has been charged with under s19(3) of the Act states that on conviction the respondent shall be liable to imprisonment not exceeding five years or to whipping not exceeding three strokes or to both. I agree that following *Jayanathan*'s case, imprisonment is not mandatory. Notwithstanding that, from the punishment provided by law it can be seen that the offence is a serious offence, being of a custodial nature rather than imposition of a fine.

[23] However, it is regrettable that the prosecuting officer in the court below informed the court that the respondent had no previous conviction and did not press for a deterrent sentence. Far from being a first offender, the respondent had two previous convictions having been sentenced to four months and three months' imprisonment (to run concurrently) for two offences of possession of dangerous drugs under s 12(2) of the Dangerous Drugs Act 1952. The respondent escaped from Pusat Serenti about two months after being detained there and was only arrested about three years later.

[24] Looking at form 3 dated 4 May 2000 entitled 'Akta Penagih Dadah (Rawatan dan Pemulihan) 1983 (Perenggan 6(1)(a) dan subseksyen 6(2)) Perintah Menjalani Rawatan dan Pemulihan di Pusat Pemulihan dan Menjalani Pengawasan', the respondent was sent to the Pusat Serenti Kuching, Sarawak, to undergo treatment and rehabilitation for two years. Upon completion of that prescribed period he is subjected to several other conditions as follows:

> (b) selepas itu menjalani pengawasan oleh *Pegawai Pemulihan/Pegawai polis/ pegawai polis tentera/pegawai memerintah selama tempoh dua tahun di bawah syarat-syarat yang berikut:
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> (i) orang tersebut hendaklah tinggal di kawasan No 393, Jalan 10 Chawan, Kuching, Sarawak;
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> (ii) orang tersebut hendaklah sentiasa memberitahu pegawai tempat kediamannya dan tidak boleh menukar tempat kediamannya atau meninggalkan kawasan tempat kediamannya tanpa kebenaran bertulis Ketua Pengarah;
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> (iii) orang tersebut hendaklah melaporkan diri di Jabatan Narkotik Simpang Tiga Kuching (sebagai mana yang ditetapkan oleh Majistret) tidak lewat dari 72 jam setelah dilepaskan dari Pusat Pemulihan dan pada Minggu Pertama haribulan tiap-tiap bulan kalendar antara 6.00 pagi dan 6.00 petang;
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> (iv) orang tersebut tidak boleh mengambil, menggunakan atau memiliki apa-apa dadah berbahaya;
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> (v) orang tersebut hendaklah menjalani apa-apa ujian pada bila-bila masa dan di mana-mana tempat sebagai mana yang diperintahkan oleh pegawai; dan

(vi) orang tersebut hendaklah menjalani apa-apa program bagi pemulihan penagih dadah yang diadakan oleh Kerajaan.

[25] Form 3 is a combination of the forms 3 and 4 entitled 'Order to attend a rehabilitation centre' and 'Order of supervision' contained in the Schedule to the Drug Dependants (Treatment And Rehabilitation) (Forms) Rules 1983. The contents of form 3 is self-explanatory and it is crystal clear that the period of detention and the supervision and the other rehabilitative methods stated therein are aimed to secure the well-being of drug dependants ultimately, the respondent included.

[26] I respectfully disagree with the learned counsel's submission that the offence is technical and trivial. Reconciling the objective of the legislation, which is to treat and rehabilitate drug dependants and the respondent's individual interest, the court would be failing in its duty as a custodian of justice if it does not mete out an appropriate sentence, which would serve as a deterrent sentence to the respondent and other likely offenders. Furthermore, in the context of the respondent, having been certified to be a drug dependant, it is in the his interest that he remains at the rehabilitation centre so that he could outgrow his drug addiction and to prevent him from the likelihood of progressing to more serious drug offences and be a menace to society.

[27] With due respect to the learned counsel for the respondent, I find there are no extenuating circumstances in this case. Indeed if there is any ring of truth in the respondent's allegation (that he has been abused), why is the respondent not earnest in lodging any complaint or report to safeguard himself from the time he escaped till his arrest, bearing in mind that it would be in his interest to do so as he is bound to comply with the various directions under the detention order and failure to do so has penal consequences. There is therefore, no proof of such abuse caused by the officer in charge as alleged.

[28] For the aforesaid reasons, I find that I am compelled to interfere with the order of the learned magistrate which is undoubtedly inappropriate in the circumstances. Pursuant to s 316(c) of the CPC, I alter the order and sentence the respondent to 12 months' imprisonment.

Order altered.

Reported by Loo Lai Mee